

# House Calendar No. 2.

62D CONGRESS, { HOUSE OF REPRESENTATIVES. { REPORT  
1st Session. { No. 2.

## ELECTION OF SENATORS BY THE PEOPLE.

APRIL 12, 1911.—Referred to the House Calendar and ordered to be printed.

U. S. Congress House

Mr. RUCKER of Missouri, from the Committee on Election of President, Vice President, and Representatives in Congress, submitted the following

### REPORT.

[To accompany H. J. Res. 39.]

The Committee on Election of President, Vice President, and Representatives in Congress, to which was referred the joint resolution (H. J. Res. 39) proposing an amendment to the Constitution of the United States authorizing the election of Senators by a direct vote of the people of the several States, having considered the same, beg to report said joint resolution back to the House with the recommendation that it do pass.

As the joint resolution reported is in the exact words of Senate Joint Resolution 134, reported from the Senate Committee on the Judiciary in the Sixty-first Congress by Mr. Borah, your committee adopts the able and exhaustive report there made, omitting some portions of same.

#### II.

The first draft of the Constitution submitted to the Constitutional Convention of 1787 by Edmund Randolph provided as follows:

“Resolved, That Members of the second branch of the National Legislature ought to be elected by those of the first out of a proper number of persons nominated by the individual legislators, etc.”

The draft of the Constitution submitted by Mr. Pinckney was practically the same, to wit:

“The Senate shall be elected and chosen by the House of Delegates.”

The draft submitted by Mr. Hamilton provided as follows:

“The Senate to consist of persons elected to serve during good behavior; their elections to be made by electors chosen for that purpose by the people. In order to do this the States to be divided into election districts.”

The 11 propositions submitted by Mr. Patterson do not seem to have covered the subject at all; in fact, Mr. Patterson's scheme was really to strengthen the old confederation.

Gouverneur Morris proposed that the Senators be appointed by the President to serve for life and without compensation.

Mr. Wilson of Pennsylvania urged that the election of Senators be made by the people.

The vote was taken on the election by the lower branch of the legislature and was lost. Dickinson afterwards moved that they be elected or chosen by the individual legislators. A substitute was offered for this referring the election to the people. The substitute was defeated, and the method of choosing through the State legislatures was thereupon adopted.

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## III.

One can not in reading the proceedings and debates of the convention fail to notice the limited amount of discussion on the subject of the mode or manner of electing Senators. Some of the reasons urged in the debate would certainly not avail at this time, and would not under present conditions and after a century of experience in the rule of the people be advanced by anyone. Gouverneur Morris thought it desirable that the Senate be made up of men of great and established wealth, that thus they might keep down the "turbulency of democracy."

Roger Sherman said:

"The people immediately should have as little to do as may be about the Government. They lack information and are constantly liable to be misled."

Mr. Gerry said:

"The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots."

Mr. Dickinson states that the Senate should bear as strong a resemblance to the House of Lords of England as possible.

It is a noticeable fact that almost all parties who opposed the election of Senators by popular vote or by the people also opposed the election of Representatives by the people, and assign almost the same reasons.

These fears were not unnatural at that time, and especially in view of the experience of history and our own experience under the Confederation.

Mr. Wilson, of Pennsylvania, was the strongest advocate and practically the sole advocate in the convention of the election of Senators by popular vote. He said among other things:

"If we are to establish a national government, the government ought to flow from the people at large. \* \* \* I wish the Senate to be elected by the people, as well as the other branch."

We ought not to overlook, either, a statement by Mr. Madison, although we do not contend that he advocated election of Senators by popular vote.

"The great fabric to be raised would be more stable and durable if it should rest upon the solid foundation of the people themselves rather than if it should stand merely on the pillars of the legislature."

## IV.

We do not find any discussion whatever in the State conventions which ratified the Constitution on the mode of electing Senators. It was only referred to once or twice incidentally and seems not to have received any serious or extended discussion at any time. Neither was it discussed in the current literature of the day to any great extent. It was referred to in the *Federalist* by Mr. Hamilton (No. XXVII), and also by Mr. Hamilton or Mr. Madison in No. LXII.

In the last number of the *Federalist* referred to we find this paragraph:

"It is equally unnecessary to dilate on the appointment of Senators by the State legislatures. Among the various modes which might have been devised for constituting this branch of the Government, that which has been proposed by the convention is probably the most congenial with public opinion. It is recommended by the double advantage of favoring a select appointment and of giving to the State governments such an agency in the formation of the Federal Government as must secure the authority of the former and may form a convenient link between the two systems."

Nothing less could have been said upon the subject if the subject was to be referred to at all.

It is proper to take into consideration the condition of affairs with reference to popular voting at the time of the formation of the Constitution. Very few of the States gave to their citizens the unqualified right to vote, and very few allowed the people the right to elect any considerable number of officials. Most of the offices in the State were filled by appointment, some by the legislature, some by the chief executive. For a number of years the legislature had been practically a gathering of the people; that is to say, the body through which they acted in sundry matters not strictly legislative. A vast change has taken place since then. At the present time practically all the officers from precinct officer to the President are elected, with certain exceptions as to the judiciary. The President, in view of the function now performed by the electors, is in reality elected by popular vote. Manhood suffrage has everywhere become general and practically unqualified.

We do not cite these historic facts for the purpose of in any way seeking to impeach or criticize the remarkable men who framed our Constitution. In the science of government none have ever excelled the men who gathered at Philadelphia for the





great task of 1787. The general principles of government which they announced and incorporated into the charter few indeed would challenge. But in the mechanism or machinery by which those general principles are applied from decade to decade, or century to century, there may arise the necessity of change. The economic, social, and industrial changes which have taken place since the present method of electing Senators was established seem to require a reconsideration of the method; not for the purpose of changing the fundamental principles of our Government, but for the purpose of maintaining the very principles which the fathers sought to establish.

## V.

It has been urged that if the method of electing Senators is changed then we must be prepared to consider the proposition of a change with reference to the equal representation in the Senate. It is said that the older States and the more populous States will not long submit to equal representation if the old method of electing Senators is disposed of through amendment. The method or mode of electing Senators had nothing to do in the convention with the question of equal representation in the Senate by the States. The compromise which was effected between the large States and the small States with reference to representation was not influenced one way or the other by the mode of electing Senators. Had the fathers seen fit to say that the Senators should be elected by popular vote the compromise between the large and small States would have been precisely the same. It would still have been necessary, in order to frame the Constitution, to meet upon the basis upon which they did meet, to wit, equal representation in the Senate and proportionate representation in the House. A thorough search of the records of that date will not disclose that anyone contended that the method or mode of electing Senators was a part of the compromise between the large and the small States. There would be the same necessity and the same reason for equal representation after the adoption of this proposed amendment as before. The equal representation of the States can not be taken away without the consent of all the States. There is scarcely any danger of such a change. At least, if there is any such danger, it could neither be augmented nor retarded by a change in the mode of electing Senators.

## VI.

It is also said that the change in the method of electing Senators will operate to change the nature of the organization of our Government and of the relations which the States bear to the Federal Union and of the relations which the Senators bear to the States and to the people thereof. It was undoubtedly in the minds of the fathers that the Senators should in a peculiar sense represent the State something as an ambassador. That idea naturally arose out of the fact that the States had been separate and independent sovereignties, and regarded each other to a great extent as wholly independent States. But that condition has been modified both in fact and as a theory. The Senators of a State would be just as thoroughly representative of the State if elected by the people as they are when elected by the legislature. In what possible way could the mode of choosing Senators change his relations to the State or people thereof? It might change his relations to certain interests and certain forces within the State, but if we are to suppose that a State consists of all the people and of all the interests, will he not still be its representative in every sense when his election comes from all the people of his State?

This amendment does not propose in any way to interfere with the fundamental law save and except the method or mode of choosing the Senators. It will still be the duty of the Senator to see that the States respectively are not denied any of the rights to which they are justly entitled under our system of government. It will still be the duty and the pride of the Senator to see that the Commonwealth which he represents in its entirety has that full representation to which it is entitled under the fundamental law. The change will consist in bringing him more thoroughly in touch with all the interests and all that makes up a great State, and that is certainly desired.

## VII.

There is much force in the argument that the framework of our Government should be changed only after long deliberation and consideration. The fathers exhibited no greater wisdom than when they provided against sudden changes of the framework of the Government. But in proposing this amendment, we are proposing a proposition which has been up for discussion for at least three quarters of a century. Certainly no complaint can be had at this time as to haste or lack of consideration.



Aside from the proposition that Mr. Wilson urged the matter in the Convention of 1787, as early as 1826 a resolution was submitted in Congress looking to this change in the method of electing Senators. The subject has been before Congress session after session. It has met the approval of the first branch of Congress many times. It has received serious discussion here upon different occasions by some of the ablest men who have occupied seats in the Senate. At least 31 States have declared in favor of the amendment or the principle. It has been the subject of years of discussion of editors and publishers. Literature on the subject is very extensive, and now, after so long a period of discussion and consideration, the earnest, sober, second thought of the people, upon which the fathers relied so implicitly, is greatly in its favor. May not we trust ourselves to trust that wisdom? Is it not well to preserve, in the form of an amendment to the Constitution, the public opinion so long in forming and so persistently maintained?

#### VIII.

It is believed that one of the great advantages to be gained by a change of the mode of electing Senators is that of leaving the State legislatures free and unembarrassed to attend to that legislation which the interests of the State require. It is frequently true that a senatorial election not only pushes aside all matters of local interest, in so far as the election of members to the legislature is concerned, but that it also occupies not only weeks, but sometimes months, or the entire session of the legislature, to the great detriment of the State's public business. Not only is legislation which ought to be had not had, public interests which ought to be cared for are not cared for, but charges of bribery arise and scandal attaches to the entire lawmaking department of the State.

#### IX.

The popular election of Senators would secure regular and equal representation in the Senate. During the last 20 years some 15 or 16 contests in different States have been carried on with such bitterness that the body charged with the duty of electing Senators proves powerless to perform its office. In several instances special sessions of the legislature for the sole purpose of filling vacancies have occurred. A number of States have acceded to vacancies, and thus have been deprived of their equal suffrage in the Senate. There would seem to be no reason why such a system should still be maintained in the face of the fact that long years of experience have shown that judgment and wisdom and cleanliness prevail on the part of the people in selecting by popular election their governors and other important officials. It seems wholly unnecessary, in view of the enormous powers reserved to the States, and of the enormous amount of work which they ought to do and which they must do in order to preserve the integrity of our institutions in the development of our industrial life, to burden the State with a method of election which poisons oftentimes the source of the State's legislative power, demoralizes it, and involves and embarrasses and humiliates the whole Commonwealth, when as a matter of fact all might be done without any practical possibility of corruption, delay, embarrassment, or demoralization. Have we not advanced far enough in democratic government to rest securely upon the judgment and wisdom of the individual voter in the selection of those who are to represent the interests of the State in the National Senate?

We do not care to enter upon a discussion of the instances of bribery and corruption which have taken place in the legislatures of the different States in the last 25 years, and which could not have occurred had popular elections prevailed. In this respect we may profitably place alongside the election of the governors of the different States that of the election of the Senators, and in this way test the cleanliness of the one system and the corruption at times of the other. No one contends for a moment that it is the universal practice or the general rule that legislatures are thus corrupted, but it must be admitted by all that if those who desire to corrupt enter the field at all it is after the legislature has convened. How often is it true that no taint of wrongdoing or corruption attaches to the election until the legislature has convened. The small number of parties to be controlled, the possibility of logrolling with different local interests, of trading this or that against votes, is tempting indeed to those who seek a senatorship, not upon merit, but through sinister means.

#### X.

It should not be overlooked either that the election of Senators by popular vote would not only leave the nomination and election of the members of the legislature upon the simple issue of their fitness for that particular work, but it would place every candidate for the high place of Senator before the people, where his views and his

relationship to the public interests of the State could be known and understood of all. There is nothing more important in the matter of selecting public officers than of having the candidate take into his confidence those whom he is to represent prior to the time that the certificate of election is issued.

## XI.

Finally, we believe that some deference ought to be paid to public opinion. Public or popular opinion has taken hold of the subject, and the demand for this change has been continued and persistent, distinct, pronounced, and imperative; in fact, it is almost unanimous among the great mass of the people. To yield to this demand is not to yield to passion or impulse, to inconsiderate judgment hastily formed, but it is yielding to that species of public opinion characterized by deliberation and judgment which is the basis of our institutions and the groundwork upon which we build under our form of government. It can not be said, if our theory of government is correct, that the judgment of the people thus formed and built up through the long process of years is to go unheeded. The idea which once prevailed that the people act in haste and with passion and without judgment is no longer tenable in this age, in which the best literature of the land reaches almost every American home every morning, and in which the common citizen takes an interest almost commensurate with the leading public men of 100 years ago.

May we not safely say, therefore, that something is due to public opinion in this country of ours, and under our form of government? Will anyone doubt that in providing for the election of Senators by the legislatures the fathers largely acquiesced in the prevailing opinions and customs of that day, as reflected in the records of history of those days? Are we not safe in accepting the universal opinion of this day as reflected in this universal demand for a change?

## VIEWS OF MR. DANFORTH.

The undersigned, a member of the Committee on Election of President, Vice President, and Representatives in Congress, is opposed to the action of that committee, at its meeting held this morning, in approving the joint resolution (H. J. Res. 39) proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States. My objections are on the following grounds: That said proposed amendment is unwise; that the committee has not been afforded time nor opportunity for a careful consideration of the same, requisite for the decision of a question of so much importance.

HENRY G. DANFORTH.

APRIL 12, 1911.







